IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 19501 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CHANDUBHAI BUDHABHAI PARMAR AND OTHERS
Versus
STATE OF GUJARAT AND ANOTHER

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Appearance :
MR VC DESAI for the Petitioners
MR SATYAM CHHAYA, ASSTT GOVERNMENT PLEADER for the Respondents

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 12/09/2007

ORAL JUDGMENT

1. Heard Mr. V.C. Desai, learned advocate appearing for the petitioners. Mr. Desai, learned advocate, invited attention of the Court to the facts of the case, which are as under:

1.1. Petitioner Nos. 1 and 3 and deceased Mangalbhai were brothers. Petitioner Nos. 2/1 to 2/4 are the heirs of deceased Mangalbhai. Pedigree is set out in para 3 of the petition.

1.2. Lands bearing Survey Nos. 1584 (Paiki), 1654 (Paiki) and 1547 (Paiki) situated on the outer part of Talavadi in the sim of village Nayaka, District Kheda, were being cultivated since the year **1954** by Budhaji Kalaji- father of petitioner Nos. 1 and 3 and grandfather of petitioner Nos. 2/2 to 2/4. The said land was having pits and was uneven and hence, after spending substantial amount of Rs.25,000/- (approx.) by Budhaji, the same was made even and cultivable. Deceased Budhaji had also put in physical labour in doing so. Budhaji expired on 04.06.1978. After the sad demise of Budhaji, his widow Divaliben was cultivating the said lands and was also paying requisite fine to the Government. A notice was given under Section 61 of the Bombay Land Revenue Code by Mamlatdar of Matar, to which Divaliben submitted that the said lands be given to her on permanent basis. The widow of Budhaji had submitted that, besides her economic condition, factor of she being of backward class and that her husband had spent substantial amount for making the land even and cultivable, the land should be granted to her on permanent basis. The Mamlatdar, taking into consideration the grounds put forward by Divaliben, recommended the matter for regularising the encroachment.

1.3. By order dated 26.8.1993, Collector, Kheda rejected the demand of Divaliben. Divaliben expired on 20.08.1991. Thereafter, petitioner Nos. 1 and 3 and their deceased brother Mangalbhai submitted an application that, for last 40 years, they are cultivating the land in question and are paying 'Upaj' to the Government. They also submitted that, for all this period, they are in possession of the land in question and have spent labour and have incurred expenses to make the land cultivable. It was also stated by them that if the said lands are given for agriculture purpose, there will be no problem for water. They produced a copy of the letter of the Deputy Executive Engineer, Irrigation Department that if the lands are given on permanent basis, the department has no objection. They have also pleaded that they belong to Baxi panch and they do not have sufficient land so as to maintain their family. Taking into consideration these facts and other relevant facts, they prayed that, the said lands be given to them on permanent basis. Besides they also expressed their willingness to pay occupancy price, as may be determined.

1.4. After considering Government Resolution No.Kramark-Encroachment-1072-28265-dated 8.1.1980, by order dated 14.09.1994, respondent No.2- Collector, Kheda informed petitioner Nos. 1 and 3 and their brother Mangalbhai that, on principle, it has been decided to regularise the encroachment and encroached

lands are allotted to each of them in proportion as stated in the said letter/order. The collector directed petitioner Nos. 1 and 3 and their brother Mangalbhai to deposit the occupancy price in Matar Sub-Treasury as indicated in the said letter. A copy of the said letter is at Annexure-'A' to this petition.

1.5. Pursuant to that letter/ order, petitioner Nos. 1 and 3 and their brother Mangalbhai deposited the requisite amount in Sub Treasury, Matar on 21.09.1994 and respondent No.2 passed further order on **05.10.1994**, bearing No. JMN/Vashi-3103 and directed to regularise and to give the said lands for agriculture purpose to each of the petitioners, i.e. Petitioner Nos. 1 and 3 and deceased Mangalbhai in proportion, as set out in the said order.

1.6. It is this order, which is taken into SUOMOTU revision by issuing notice dated 19.12.2006 and an order is passed pursuant to that show cause notice.

2. Mr. Desai, learned advocate for the petitioners, submitted that it is a settled law not only by the decisions of this Court but also by the decisions of the Hon'ble the Apex Court that, 'any order of the Government, if at all, is to be taken in revision, same can be taken in revision only within reasonable time'.

3. Learned advocate Mr. Desai also submitted

that the concept of 'reasonable time' is also clarified by the decisions that it should be a 'period of one year'. It is submitted that, by no stretch of imagination, order dated 5.10.1994 can be taken into revision in the year 2006 and cannot be uprooted by an order passed in the year 2007.

Mr. Satyam Chhaya, learned Assistant Government Pleader, submitted that, on merits, the order passed in revision is just and proper. He submitted that order dated 5.10.1994 was obtained by not disclosing all the materials and relevant facts to the authorities and on the ground of suppression of material facts, the order of revision should not be disturbed and the same should be upheld.

4. The submission of the learned Assistant Government Pleader is besides the point for the reason, the question is whether the Government could have taken order dated 5.10.1994 in revision in the year 2006/2007 on any ground? Be it that, order dated 5.10.1994 was obtained by mis-representation. The answer is 'NO'. That being so, the present petition succeeds. The petition is allowed. Order at Annexure-'E' dated 16.07.2007 (19.07.2007) is hereby quashed and set aside. Order dated 05.10.1994 is restored. Rule is made absolute with no order as to costs.

(RAVI R. TRIPATHI, J.)

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